SUPREME COURT, U. S.

FILED

JUL 6 1968

JOHN F. DAVIS, CLERK

No. 170

In the Supreme Court of the United States

OCTOBER TERM, 1968

LOCAL UNION NO. 705, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, AFL-CIO, PETITIONER

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

EDWIN L. WEISL, JR.,
Assistant Attorney General,

ALAN S. ROSENTHAL,
ROBERT V. ZENER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 170

LOCAL UNION NO. 705, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, AFL-CIO, PETITIONER

v.

W. WILLARD WIRTZ, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13) is reported at 389 F. 2d 717. The opinion and order of the district court denying the motion to dismiss (Pet. App. 22) is unofficially reported at 63 L.R.R.M. 2315; the order of the district court granting the motion to dismiss and vacating its previous order (Pet. App. 28) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 14, 1968. A timely petition for rehearing was denied on March 11, 1968. A petition for a writ of certiorari was filed on June 7, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, a union member's internal complaint challenging a union election was sufficient to raise the questions presented by the Secretary of Labor in his action seeking to set aside the election under Title IV of the Labor-Management Reporting and Disclosure Act of 1959.

STATUTE INVOLVED

The relevant provisions of Section 402 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482, are set forth at pp. 29-30 of the Appendix to the petition.

STATEMENT

Petitioner is a local union representing hotel, motel and club employees in the Detroit metropolitan area. Godfrey Franklin, a union member nominated for the office of Vice President, was disqualified by the union's election committee on the ground that he failed to meet the requirement that candidates must have been in continuous good standing for 24 months prior to nomination. (Under the union by-laws, any mem-

ber more than two months in arrears on his dues lost his good standing.) Franklin appealed his disqualification to the President of the International Union, making the following assertion (App. 15a-16a):[1]

> The purported reason for my declared ineligibility is a sham and a crude subterfuge. The real reason is that, contrary to the wishes of Secretary-Treasurer Wolfgang, I accepted nomination for the office of Vice President in opposition to her favored candidate, incumbent Vice President Furay—whose own circumstances relative to the alleged dues provisions have, in fact, been no different from my own. This discriminatory abuse of my rights as a member of the Local and International violates the provisions of the Labor Management Reporting and Disclosure Act of 1959 * * *.

After this appeal was denied, Franklin filed a complaint with the Secretary of Labor. The Secretary investigated the complaint and then filed suit, charging that the union violated the Act by permitting Myra Wolfgang to run for the office of Secretary-Treasurer notwithstanding that she did not comply with the two years' good standing requirement, while this requirement was applied to disqualify other candidates.[2] In addition, the Secretary alleged that the union "altered

---

[1] "App." refers to the appendix to the brief for appellant in the court of appeals.

[2] Section 401(e) of the Act requires that in union elections every member in good standing shall be eligible to run for office, subject to "reasonable qualifications uniformly imposed." 29 U.S.C. 481(e).

its dues records or permitted the records to be altered so as to conceal the facts disqualifying Myra Wolfgang * * *." (App. 6a).

The union moved to dismiss the complaint, asserting that the Secretary could not challenge the election on the ground that Mrs. Wolfgang had not been subjected to the dues paying requirement because Godfrey Franklin's internal complaint had alleged discrimination only as between him and Vice-President Furay. The Secretary's complaint alleged discrimination as between Franklin and Mrs. Wolfgang. The district court initially denied the motion (Pet. App. 22-27). However, after the Tenth Circuit decided *Wirtz* v. *Local Unions Nos. 9, etc., International Union of Operating Engineers*, 366 F. 2d 911, vacated for mootness, 387 U.S. 96,[3] the district court vacated its prior order and dismissed the complaint.

The court of appeals, agreeing with the district court's first opinion, reversed and remanded for trial on the authority of this Court's intervening decision in *Wirtz* v. *Local Union No. 125, Laborers' International Union*, 389 U.S. 477 (Pet. App. 17).

ARGUMENT

1. The decision below correctly applies this Court's decision in *Wirtz* v. *Local Union No. 125, Laborers' International Union, supra.* Here, as in that case, the union had a "fair opportunity" to consider and resolve the violation charged by the Secretary in con-

[3] *Local No. 9* was vacated on the basis of a settlement agreement calling for a supervised election.

nection with the union member's internal complaint. As the court of appeals noted, the internal complaint charged nonuniform application of the dues requirement, and involved Mrs. Wolfgang in the alleged violation. To be sure, the union member failed to charge that Mrs. Wolfgang was ineligible to run under the dues requirement. But "Congress having given the Secretary a broad investigative power cannot have intended that his right to relief be defined by a complaining member's ignorance of * * * the facts" (389 U.S. at 485)—especially in a case where the union has altered records that would have revealed the true facts.

2. Although not required by statute, the Secretary's policy is to notify a union in advance of suit of all violations disclosed by the investigation, so that the union may take voluntary corrective action. The instant record by no means shows the lack of such notice which petitioner claims since the district court did not reach the point and, therefore, did not inquire into the full course of communication between the Secretary and respondent. Consequently, even if notice is necessary, the question is not presently ripe for review. And it is surely difficult to understand what difference formal notification would had made here—where respondent allegedly altered the records showing Mrs. Wolfgang's ineligibility for office.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

EDWIN L. WEISL, JR.,
Assistant Attorney General.

ALAN S. ROSENTHAL,
ROBERT V. ZENER,
Attorneys.

JULY 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 312768 6